 ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

COMMENTS OF JUNO ONLINE SERVICES, L.P.

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Juno Online Services, L.P. ("Juno"), by its attorneys, respectfully submits these comments on the Notice of Inquiry ("NOI")[1] released by the Federal Communications Commission ("Commission") regarding policies for information services and Internet usage.

INTRODUCTION AND SUMMARY

Juno, one of the nation's leading providers of Internet electronic mail ("e-mail") services to consumers,[2] has developed a new business model for e-mail that breaks sharply with the conventional methods for delivery of Internet and other information services. This new model for providing e-mail to the public not only offers consumers the ability to use e-mail without paying monthly or hourly usage charges, it also has

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[1] *Usage of the Public Switched Network by Information Service and Internet Access Providers*, Notice of Inquiry, FCC 96-488, CC Docket No. 96-263 (released Dec. 24, 1996) ("NOI").

[2] Unlike traditional e-mail providers, Juno does not charge its subscribers any fees for use of the service. *See* Comments of Juno Online Services, L.P., CC Docket No. 96-45, at 1-3 (filed Dec. 16, 1996)("Juno Universal Service Comments"). Instead, Juno has been designed to derive its revenue principally from the display of interactive advertisements, much as broadcast television has its costs underwritten by network and local advertising, and through the sale of additional products and services to its subscribers on a strictly optional basis. In the eleven months since its national launch, Juno has grown rapidly to nearly two million subscribers, making it one of the five largest commercial providers of

(Footnote continued on next page)

very important ramifications for the Commission's deliberations on appropriate federal policies, such as those regarding access charges, for Internet services.

The traditional model of Internet e-mail is fee-based; to use e-mail, one must generally purchase a bundled package of on-line tools, applications, and services, commonly for a monthly subscription fee of $19.95 per user account. Juno has taken a fundamentally different approach. Like Internet service providers ("ISPs") and on-line service providers ("OSPs"), Juno enables its subscribers to exchange e-mail with anyone in the world who has an e-mail address that can be reached over the Internet – including the millions of people who subscribe to ISPs and OSPs – but unlike these traditional e-mail providers, Juno charges its subscribers no fees of any sort. Subscribers receive a copy of Juno's "client" software for their Windows-compatible personal computer, and then use a modem to dial into one of Juno's more than 400 local access telephone numbers nationwide. Juno assumes the cost of the underlying telecommunications connectivity, except for the price (if any) of the user's phone call to his or her local access number.[3]

In the NOI, the Commission tentatively concludes that access charges should not be imposed on providers of Internet access, and seeks comment on issues associated with local exchange carrier ("LEC") cost recovery for providing information service access and appropriate policies for enhanced service providers ("ESPs") following the reform of access charges.[4] The Commission specifically solicits comment on use of the

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Internet e-mail in the United States, and by far the largest to provide e-mail to the public for free. More information about Juno may be found at the firm's World Wide Web site <http://www.juno.com>.

[3] *See* Juno Universal Service Comments, at 2-3.

[4] NOI at ¶ 312.

Public Switched Telephone Network ("PSTN") by ESPs and the implications of such usage on proposals by LECs for imposition of access charges.[5]

Juno strongly supports the Commission's conclusion that carrier access charges, as currently constituted, should not be imposed on ESPs, and concurs with the Commission's recognition of the debilitating impact that access charges would have on the continued growth and development of Internet services.

The primary reason given by LECs for advocating imposition of access charges on ESPs is that ESPs place increased demands – above what is normally associated with traditional users – on the PSTN and that without access charges, LECs cannot recover the costs of switch and related network upgrades needed to support this increased traffic.[6] They further contend that ESPs use flat-rated local telephone services predominantly to receive, rather than to originate calls. Yet ESPs are not unique in this regard. There are a variety of other business line users – including ticketing agencies, credit card validation services, airline reservation services, catalog merchants and the like – whose "inbound" usage of the local telephone network is similar to ESPs.

Furthermore, not all ESPs impose the same traffic demands and costs on LEC networks. Juno, for instance, has designed and operates its e-mail service such that all reading, writing and filing of messages is done "off-line" on the subscriber's computer. This limits the "on-line" time during which subscribers are connected to the network to only the relatively brief period necessary for a subscriber to download to his or her

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[5] *Id.* at ¶ 315.

[6] NOI at ¶ 286 ("The BOCs claim that Internet users typically stay on the line far longer than voice users, but that the flat monthly rates Internet service providers pay to incumbent LECs do not cover the additional cost of network upgrades that are required to support such traffic.").

computer any e-mail he or she has received and upload any mail he or she has written. Typically, this involves a connection of less than one minute in duration.

Even if the access charge system is reformed and access charges are reduced to cost, Juno does not believe that access charges should be applied to ESPs and other information service providers. Imposition of an access charge system would be inconsistent with the Commission's mandate to promote competition and would unlawfully discriminate against ESPs. Juno believes also that access charges are not an appropriate solution to remedy network congestion alleged to be caused by ESPs and their customers.

If the Commission determines that certain ESPs should pay access charges, it must recognize that there are significant differences among ESP configurations and their use of local telephone networks. Characteristics that vary from ESP to ESP include average holding times of ESP subscribers, the frequency with which a subscriber dials into an ESP, the time of day when subscribers call an ESP, and the substitutability of an ESP service for traditional voice services. These differences must be considered when assessing the alleged need for access charges to recover LEC costs of providing network access to ESPs. In particular, those ESPs that generate network usage which is *comparable to or less than that of typical business line users,* such as Juno, should clearly not be subject to LEC access charges.

Finally, the Commission should be particularly sensitive to imposing access charges on ESPs that make available services which are in the public interest. The Commission should not impose access charges on providers of free e-mail services because doing so would be inconsistent with the Commission's universal service goals

and create havoc in the cost basis for companies, such as Juno, whose business models have been based on the continued availability of tariffed, local exchange services as a means of network access.

DISCUSSION

I. THE COMMISSION SHOULD NOT IMPOSE CURRENT ACCESS CHARGES ON ENHANCED SERVICE PROVIDERS

In its Notice of Proposed Rulemaking ("NPRM") on the reform of access charges, the Commission tentatively concluded that LECs should not be permitted to impose access charges on information service providers.[7] In reaching this conclusion, the Commission recognized that "it is extremely likely that, had per-minute interstate access rates applied to ESPs over the past 13 years, the Internet and other information services would not have developed to the extent they have today – and indeed may not have developed commercially at all."[8] The Commission also reasoned that imposing access charges at this time could have potentially detrimental effects on the "still-evolving" information services industry.[9]

Juno strongly supports these conclusions. The imposition of carrier access charges on ESPs would reverse the explosion of competition for Internet access services – including substantial price decreases – that has already made the Internet the fastest growing communications medium in history. It will be years before a cost-based access charge system is finally in place, and the public would be best served if, in the interim,

[7] *Access Charge Reform*, Notice of Proposed Rulemaking, FCC 96-488, CC Docket No. 96-262 (released Dec. 24, 1996) at ¶ 288 ("Access Charge NPRM").

[8] *Id.* at ¶ 285.

[9] *Id.* at ¶ 288.

the Commission focuses on promoting competitive and technological alternatives to LEC services for purposes of Internet access. Moreover, application of access charges to ESPs, who are users of LEC services, would inappropriately treat them as if they are telecommunications carriers. Particularly because there is no legitimate basis to distinguish ESPs from other large business users, access charges would contravene Section 202(a)'s prohibition of unreasonable discrimination between users of "like" telephone services.

A. The Commission Must Promote Competition And Encourage, Not Discourage, New Communications Services

The Telecommunications Act of 1996 clearly and unequivocally instructs the Commission to promote competition and de-regulation,[10] and states that it is the policy of the United States to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."[11] Congress also found that the Internet has "flourished, to the benefit of all Americans, with a minimum of government regulations."[12]

Consistent with these findings and directives, the Commission should not apply an access charge system to the Internet or establish additional regulations that will impede the growth of the Internet and information services. The imposition of access charges and additional regulation on ESPs would undermine the robust competition

[10] The intent of the 1996 Act is "to provide a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all American's by opening all telecommunications markets to competition." *See* Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

[11] 47 U.S.C. § 230(b)(1).

[12] *Id.* at § 230(a)(4).

that now exists for Internet access services, lead to price increases for consumers, and make it less likely that all Americans will be able to use the Internet.

First, as the Commission is well aware, the existing access charge system is bloated with subsidies and other non-cost based charges. Applying current access charges – averaging nearly $3.60 per hour – to ESPs would merely transfer the inefficiencies of telephone service pricing to the Internet access market, a result that is plainly inconsistent with the public interest and the policies articulated in the 1996 Act. Furthermore, in light of the already thin profit margins realized by most ISPs (whose total hourly charge to their subscribers is universally less than $3.60 per hour, and in the case of free services is zero), imposition of access charges would force ISPs to dramatically increase their rates, and almost certainly make it impossible to offer a free service such as Juno does. The change would drive many Internet access providers out of business.

Second, it will take many years for the carrier access charge system to be reformed to a point where it accurately reflects costs. Even if it were appropriate to impose cost-based access charges on ISPs, in lieu of the state-tariffed business line charges they now pay, it would be years before a cost-based access charge system is finally in place. The Commission, the LECs and the public would be best served if, in the meantime, the Commission focuses on promoting competitive and technological alternatives to LEC services for purposes of Internet access. Competition will create options for ESPs and their customers, while technical developments – including promising new technologies implemented by SBC and others to re-route Internet

communications in order to avoid PSTN switch congestion – may themselves eliminate the basis for LEC access charge proposals.

B. Enhanced Service Providers, Like Other End Users of the PSTN, Should Not Be Subject to Access Charges

Requiring ESPs to pay carrier access charges would be unlawful. Section 202(a) of the Communications Act prohibits "any unjust or unreasonable discrimination in charges . . . in connection with like communication services."[13] To determine whether a particular practice is unreasonably discriminatory, the courts examine (1) whether the services are "like;"' (2) if they are, whether there is a price difference between them; and (3) if there is, whether that difference is reasonable.[14] Applying this test to the imposition of access charges on ESPs demonstrates that such an action by the Commission would not withstand judicial scrutiny under Section 202(a).

First, as the ETI study sponsored by the Internet Access Coalition has demonstrated, services purchased by ESPs from LECs, principally 1MB business lines, are the same as those purchased by other business subscribers. Additionally, the capabilities provided by the LEC to the ESP and the demand placed on the local telephone network switch by the ESP are comparable to the services and demands placed on the switch by other types of business users.[15] Indeed, although the principal LEC argument for access charges is that ESPs use flat-rated local telephone services predominantly to receive calls, there are a variety of other business line users –

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[13] 47 U.S.C. § 202(a).

[14] *See, e.g., Competitive Telecommunications Ass'n v. FCC*, 998 F.2d 1058, 1061 (D.C. Cir. 1993).

[15] Lee Selwyn & Joseph Laszlo, *The Effect of Internet Use on the Nation's Telephone Network*, Economics and Technology, Inc., Jan. 1997 ("ETI Study") at § 2, p. 9 ("The usage levels for ESP trunks as cited by the BOCs are therefore not particularly noteworthy; indeed, they are found frequently among other large-volume end users.") <http://www.internetaccess.org/eti_part2.htm>.

including ticketing agencies, credit card validation services, airline reservation services, catalog merchants and the like – whose "inbound" usage of the local telephone network is similar to ESPs.[16] Thus, the services that an ESP purchases from a LEC are "like" the services purchased by many other medium-to-large business customers and are used in a manner comparable to that in which they are used by other business subscribers.

No legitimate justification exists for price discrimination between local business services purchased by ESPs and other business telephone users. LECs argue for access charges as a way to reduce network usage and to generate additional revenue they claim is necessary to support network and operations changes. Yet local telephone usage by ESPs, even if it imposes additional or unusual costs on the LECs, is also accompanied by *increased* revenues to LECs from second lines and ISDN service. Furthermore, only anecdotal evidence of LEC network congestion has been presented, and certainly nothing to demonstrate any systemic network congestion impacts that would justify an ESP-targeted discriminatory pricing mechanism. In fact, the Network Reliability and Interoperability Council ("NRIC"), a federal advisory committee under the Commission, has reported that no network outages have been reported that can be linked to Internet usage.[17] In light of the broad definition of "outage,"[18] which encompasses dial tone delay and places a special emphasis on emergency services, the

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[16] NOI at ¶ 316.

[17] *Hundt Asks Network Reliability and Interoperability Council to Monitor Impact of Internet Growth on Public Networks*, FCC News Release, Nov. 1, 1996.

[18] An outage is defined broadly as a significant degradation in the ability of a customer to establish and maintain a channel of communications as a result of a failure or degradation in the performance of a carrier's network. 47 C.F.R. § 63.100(a)(1). Thus, an outage does not necessarily mean a total loss of service. The FCC has clarified that the term outage includes both loss of dial tone and significant congestion that results in dial tone delay. *Clarification of Interim Outage Reporting*, FCC Public Notice, June 2, 1992. Finally, the FCC is particularly interested in outages that impact Public Service

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Commission's own data do not support the allegation that Internet traffic is congesting the PSTN.[19]

Applying access charges to ESPs makes no policy sense. The Commission has properly recognized that ESPs are end users that should not be responsible for payment of access charges.[20] As such, ESPs are subject to rates and a regulatory regime designed for end users, not access charges which were established for carriers that interconnect with the local exchange network. Furthermore, ESPs are not interconnected to LEC networks like long-distance carriers, are not themselves eligible for interconnection and unbundling under Section 251 of the Act, and generally do not need features associated with carrier access services, such as "equal access" long distance dialing, trunk-side signaling and other voice-oriented functionalities. In a very real sense, imposing access charges on ESPs would unlawfully force ESPs to pay for services that they do not want or use.

Contrary to the inference made by parties who suggest that ESPs are somehow "exempt" from contributing to the costs of the local network, the facts are otherwise. ESPs purchase service from LECs either by requesting business lines, with rates that are set by local tariffs to recover LEC costs, and/or through the purchase of dedicated facilities under special access tariffs. Additionally, ESPs often use multi-line hunt

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Access Points ("PSAPs") that handle 911 traffic and requires more stringent reporting of outages impacting PSAPs. 47 C.F.R. § 63.100(e).

[19] Additionally, the FCC recently discontinued reporting requirements placed on LECs that monitored dial tone delay. *In the Matter of Revision of ARMIS Quarterly Report, et al*, Order, CC Docket 96-193, AAD 95-91 (released Dec. 17, 1996). Such an action by the Commission would appear inconsistent with a justification that Internet usage was causing network congestion and inducing dial tone delay.

[20] *See, e.g.*, 47 C.F.R. § 69.2(m); *Northwestern Bell Telephone Company Petition for Declaratory Ruling*, Memorandum Opinion and Order, 2 FCC Rcd 5986, 5988 at ¶ 20 (1987) ("[U]nder this Commission's rules, enhanced service providers are classified as end users.").

groups and pay for this additional functionality. It appears that the real LEC complaint is not with the absence of access charges for ESPs, but rather with their own inability, or unwillingness, to secure rate relief from state commissions for local business services used for "dial-up" Internet access. Whether or not those rates are compensatory or should be restructured to provide for measured inbound charges is a matter that should be addressed at the state level and for local business service rates in general.

To the extent that LECs argue they are not receiving adequate revenues to recover costs associated with increased use of the PSTN as a result of the Internet, the evidence again suggests otherwise. LECs receive significant direct revenue from ESPs for service. They also receive significant indirect revenue as a result of the growth of the Internet and other information services. Such revenue arises from increases in the sale of second lines for residents to support Internet access, increases in the sale of ISDN lines that LECs are promoting as a way to provide fast access to the Internet, and the provision of data services such as frame relay services. Finally, many LECs, including Ameritech, BellSouth, Bell Atlantic, Pacific Bell, SBC and US WEST, have created ISP subsidiaries to offer Internet access services, e-mail and other Internet services.

In sum, ESPs are users of the LEC networks, and should be treated as such. The LEC evidence of increased congestion and costs is hardly compelling, and in any event is insufficient to justify discriminatory rate treatment for ESPs compared to other large business subscribers.

II. THE COMMISSION MUST CONSIDER DIFFERENCES AMONG ESPs AND ENSURE THAT ESPs WITH NETWORK USAGE DEMANDS COMPARABLE TO OR LESS THAN TRADITIONAL USERS OF THE PSTN DO NOT PAY ACCESS CHARGES

In the NOI, the Commission seeks comment on whether it should distinguish between different categories of information or enhanced services.[21] It recognizes that there are "many kinds of information services, with different usage patterns and effects on the network,"[22] and notes that arguments about network congestion caused by long hold-time calls "would not seem to" apply to information services such as telemessaging or credit card validation.[23] Juno fully agrees that any Commission consideration of access charges must take into account precisely these sort of differences among the many types of ESPs. Regardless of the result for traditional ISPs and OSPs, ESPs with network usage demands comparable to or less than those of traditional users of the PSTN should not pay access charges. Juno's e-mail service, which performs most subscriber functions "offline" and has an average holding time of under one minute, places lower usage demands on the PSTN than traditional business users and should not be subject to access charges.

A. Many Types of ESPs, Particularly Those Which Do Not Support Web Browsing, Are Not Responsible for Any Increased LEC Usage Due to the Growth of the Internet

Different types of ESPs place different demands on the PSTN. In particular, significant differences exist among ESPs that relate to LEC arguments that increased use of the Internet is leading to network congestion:

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[21] NOI at ¶ 316.
[22] *Id.*
[23] *Id.*

1. the holding time of callers using an ESP service;
2. the frequency with which a caller accesses an ESP's service;
3. the time of day when callers access a particular ESP service;
4. the substitutability of the ESP service for other traffic that was previously placing demand on the PSTN;
5. the type of connection arrangement the ESP has with the LEC; and
6. the quality of service in terms of call blocking that an ESP seeks to provide.

In considering whether telephone network impacts justify access charges or other new policies for ESPs, it is vital that the Commission carefully examine the actual network impact of different ESP services.

These factors are important for a number of reasons.[24] First, holding time[25] is important because the longer the holding time, the longer the local loop, switch and other portions of the PSTN are being used by a particular end user. Holding times must also be examined in the context of subscriber behavior in accessing a particular service. For example, if when an end user accesses a particular ESP service the holding time is one hour, but the end user only accesses that service once a day or once a week, it is unlikely that this will have any appreciable impact on network usage. If, on the other

[24] The first four factors impact the demand placed on the network in general, but have their most direct effect on the LEC originating switch, while the last two factors relate primarily to the demand placed on the LEC terminating switch that serves the ESP. In many instances the same switch serves as the originating and terminating LEC switch. All these factors must be considered when examining the incremental impacts placed on the PSTN network as a result of ESP services. As demonstrated below, however, if the Commission determines that it must differentiate among ESPs, only the first four factors should be considered, as the final two factors can be readily addressed to reduce their impact on network congestion.

[25] Holding time refers to the length of time a caller maintains a telephone connection.

hand, the end user accessed the service ten times a day, it would impact network usage. Whether that impact is significant will depend, in part, on the third factor – the time of day at which the access occurs. Typically, telephone switches are engineered to handle traffic loads during the peak "busy hour" of a switch. For example, a switch serving a business area might have its busy hours from 10am-11am in the morning and from 2pm-3pm in the afternoon. During non-busy hours, the switch is underutilized. Thus, if for a particular ESP service, callers access the service outside of these busy hours, this will result in a more efficient use of the switch and in all likelihood not lead to network congestion.

Some ESP services may actually reduce demand on the PSTN by providing a substitute for placing a traditional telephone call. Thus, it is not enough to simply look at the first three factors – holding time, frequency and time of day – to determine demand placed on the network. To assess LEC arguments that Internet usage is leading to increased network usage, incremental demand must be assessed by examining substitutability as well. For example, instead of placing a telephone call to have a voice conversation or to send a fax, an individual might send an e-mail message. In this way, incremental demand is zero and transmission time may actually be reduced because of the more efficient use of the network when sending an e-mail message compared to sending a fax.

The final two factors – type of connection, and ESP quality of service – primarily impact the demand on the terminating LEC switch. First and foremost, it must be left to ESPs to determine the type of connections and quality of service they wish to provide, as this is a major competitive differentiator. If an ESP wants to provide a quality of

service in which its customers can only reach its service platform on 80% of their calls, that is an ESP's business decision and not something the Commission should regulate.

The Commission should only be concerned with these factors to the extent that demand placed on terminating switches impacts the network's ability to serve other customers. The Bellcore study identifies several relatively simple alternatives for ameliorating any congestion caused by ISP traffic at the terminating switch, including putting ISP lines on separate peripherals so other customers are not effected.[26] The study also identifies three trunking alternatives that could ameliorate alleged congestion, but notes that ISPs may not be choosing these options because of "ignorance of other options," or "failure to recognize cost/performance benefits of the other options."[27] More likely, as the ETI Study demonstrates, these other options are so highly priced that ISPs and ESPs have determined that cost/performance benefits will not be realized with their use.[28] Thus, to the extent that telephone network congestion exists at terminating switches, this congestion can be mitigated by encouraging LECs to better educate ESPs to their connection options and to ensure that LEC prices for more efficient connection arrangements are not artificially high.

All of these factors suggest one obvious issue that is implicit in the NOI but has been ignored by LECs in their proposals for ESP access charges. There is nothing inherent about EPSs that has led to the dramatically increased network usage of which the LECs complain. Indeed, for many years, including most of the 1980s, ISPs and OSPs apparently had little if any impact on PSTN usage or alleged LEC switch congestion.

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[26] Amir Atai & James Gordon, *Impacts of Internet Traffic on LEC Networks and Switching Systems*, Bellcore, Aug. 1996, at p. 6.

[27] *Id.*

What is different today is that the World Wide Web is driving Internet usage. "Browsing" the Web, however, is largely an "on-line" experience, requiring the user to maintain an open connection to the Internet – and tying up a LEC switch port if that connection is a dial-up account. In contrast, services that are offered principally on an "off-line" basis, such as Juno's – which is designed to dial into Juno's central computers, transfer e-mail in a highly compressed and brief transaction, and then automatically terminate a subscriber's call, thus dramatically reducing network connection time -- place minimal demands on the PSTN. In considering access charges for ESPs, the Commission must therefore be cautious to avoid treating all ESPs alike, when the problem of LEC network congestion, to the extent it exists today, can be linked to the tremendous popularity of the World Wide Web and OSP's offering proprietary content.

B. ESPs With Usage Characteristics that Place Comparable Or Lesser Demands On the Network Than Traditional Users Should Not Pay Access Charges

The primary reason given by LECs for advocating imposition of access charges on ESPs is that ESPs place increased demands, above what is normally associated with traditional users, on the PSTN, and that without access charges, LECs cannot recover the costs of switch and related network upgrades needed to support this increased traffic.[29] Following this logic, ESPs that place demands on the network comparable to those of "traditional" end users, and thus do not disproportionately affect LEC network congestion, should not be subject to access charges. Indeed, under the LEC proposal,

[28] ETI Study at § 2, p. 7.

[29] NOI at ¶ 286. ("The BOCs claim that Internet users typically stay on the line far longer than voice users, but that the flat monthly rates Internet service providers pay to incumbent LECs do not cover the additional cost of network upgrades that are required to support such traffic.")

ESPs that place less demand on the network than traditional telephone users should, at least in theory, be eligible for *lower rates* than ordinary LEC business customers.

Juno's free e-mail service falls squarely within this last category of ESP service. Juno's e-mail subscribers place incremental demands on the PSTN that are considerably less than the demands placed on the network by traditional business users. When Juno customers dial in to access their e-mail accounts, the mean holding time is less than one minute. Additionally, the average e-mail subscriber accesses his e-mail account only twenty-five times during a given month, most commonly at times during the day that are typically outside LEC switch busy hours. Finally, as discussed previously, certain e-mail sent over Juno may replace calls or faxes that would otherwise have been sent, thereby having the incremental effect of reducing demand on the telephone network.

The PSTN, including LEC local networks, is engineered on the well-known assumption that average call holding time is 3 minutes and on peak capacity for busy hours that (although varying by central office) are typically during the business day. Juno's service, like other ESPs whose network usage is "bursty" (such as credit card validation services, ticketing agencies and the like), falls well below these accepted telephone network engineering principles. While the World Wide Web may be increasing the holding times and changing the busy hour for LEC switches serving ISPs and OSPs, Juno's e-mail service is in a very real sense a far more efficient use of the local telephone network than ordinary voice calls. The suggestion that users such as Juno should receive lower local telephone rates, while offered facetiously, is a natural consequence of the LEC's position and demonstrates why imposition of carrier access

charges on Juno would be completely inconsistent with all of the arguments advanced for repeal of the so-called "ESP exemption."

III. ESPs THAT PROVIDE FREE CONSUMER SERVICES SHOULD NOT BE SUBJECT TO ACCESS CHARGES

Whether or not the Commission eventually imposes access charges, or similar connection charges, on ISPs and OSPs, it is important to consider the public policy implications of such a system. In an era where universal communications capabilities are increasingly important to social and economic success, Juno believes that providers of free information services – whether commercial or non-profit services – should remain exempt from any access charge obligation (while of course still paying for the LEC services used for access).

Imposing access charges on ESPs that provide free consumer services would be inconsistent with the Commission's universal service objectives, under Section 254(h) of the 1996 Act, to ensure affordable telephone service and access to advanced information services, including low-income consumers, in all regions of the nation. E-mail is by far the most widely used Internet application, and for millions of Internet users represents their exclusive or predominant use of the Internet. It is rapidly becoming an indispensable communication tool. Juno believes that it is important for all Americans to have equal access to this most fundamental Internet tool. If it were required to bear increased telecommunications costs as a result of the imposition of access charges, Juno would be almost certainly unable to continue to provide free e-mail to the American public.

By offering this service for free, much in the way that broadcast television is offered today, Juno helps ensure that no individual need be an information technology have-not simply because they can not afford e-mail service. Thus, imposing access charges on providers of free services using the PSTN would be inconsistent with the FCC's universal service objectives because it would make the provisioning of free services less likely, if not impossible, given the increased, artificially imposed charges. Furthermore, imposing access charges on providers of free services would create havoc in the cost basis for companies, such as Juno, whose business models have been based on the continued availability of tariffed, local exchange services as a means of network access.

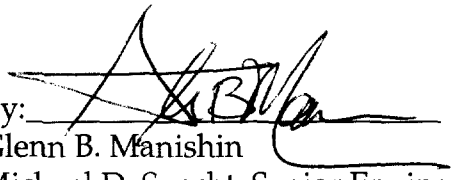
This proposal is not company specific. There are many providers of free Internet access services, including hundreds of non-profit "Free-Nets" nationwide, and a variety of commercial ESPs, such as "info lines" and other telemessaging services, that offer free access to consumers with advertiser support. These services, like Juno, meet a legitimate public need and help to support universal service without any federal or state universal service subsidy. It would be a tragedy if as the result of an overbroad and unnecessary Commission decision to apply access charges without distinction to all ESPs, providers of free information services were forced to cut back or eliminate their operations.

CONCLUSION

For all these reasons, current access charges should not be imposed on ESPs. The Commission should differentiate ESPs, such as Juno, with different network usage patterns that are not linked to World Wide Web browsing and that are not contributing

to any PSTN congestion. In particular ESPs offering free consumer services should remain exempt from any access charge or comparable interstate obligation.

Respectfully submitted,



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